SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 570

LORD MANUFACTURING COMPANY,
Petitioner,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MOTION FOR LEAVE TO FILE SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

The petition for a writ of certiorari was timely filed on January 31, 1950. Due to the necessity for printing the record and petition by the Clerk (Rule 41, par. 1), the petition has not yet been printed and served on the United States. Since January 31, 1950, this Court has, on March 27, decided *United States* v. *Commodities Trading Corp.*, Nos. 156 and 163—a case which has a direct and immediate

application to the instant case. The Memorandum attached hereto comments briefly on that case. Since the time for respondent to respond to the petition has not yet even begun to run, the consideration of this supplemental memorandum will not in any way prejudice respondent, or delay the final disposition of this case.

Wherefore, petitioner respectfully moves for permission to file the Memorandum hereto attached.

CHARLES A. HORSKY,
Counsel for Petitioner.

April 4, 1950.

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SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Since the filing of the petition for certiorari in this case on January 31, 1950, there has been, on March 27, 1950, a further decision of this Court which is highly relevant to the issues presented by the petition, and which therefore should be brought to the attention of the Court.

On March 27, 1950, the Court handed down its opinion in *United States* v. *Commodities Trading Corp.*, Nos. 156 and 163. The petition for certiorari in the instant case refers to the *Commodity Trading Corp.* case (ftn. 8 p. 14) but only to quote from the petition for certiorari filed by the United

States in that case. The opinion warrants brief further comment.

In the *Commodities Trading Corp.* case the issue was as to the "just compensation" for pepper, purchased by the corporation at prices higher than the OPA ceiling price. The court below, in reaching a conclusion that the OPA ceiling price was not "just compensation", considered, among other factors, "how much the precise pepper cost Commodities" (Op. p. 1). In this Court, the corporation urged that it had paid more than the OPA ceiling price for the pepper, and that this was a "special circumstance" (Op. p. 8) sufficient to make the ceiling price inapplicable in determining "just compensation". The United States asserted that, in fact, the cost was lower than the ceiling price. This Court said (Op. pp. 8-9):

> "We do not consider these contentions of the Government because we think that the cost of the pepper delivered provides no sufficient basis for specially excluding Commodities from application of the ceiling price. The general rule has been that the Government pays current market value for property taken, the price which could be obtained in a negotiated sale, whether the property had cost the owner more or less than that price. *Vogelstein & Co.* v. *United States,* 262 U. S. 337, 340."

Here, similarly, as we have already pointed out in the petition, the court below gave its primary attention to the *cost* of the requisitioned items to petitioner, and denied relief because it thought the amount of profit inuring to petitioner on such costs was too high. Its error in each case, in relying on irrelevant facts, is patent. One case, in which the United States was prejudiced by the error, has now been corrected by this Court. The other case, equally serious, in which it is the citizen who has suffered, should likewise be corrected.

We respectfully suggest that, in the light of the *Commodities Trading Corp.* case, not only should the petition be granted, but the decision below may properly be reversed, with instructions to enter judgment for petitioner for the amount claimed, without further briefs or argument.

Respectfully submitted,

CHARLES A. HORSKY,
RALPH HAMMAR,
EDWARD G. HOWARD,
Counsel for Petitioner.

April 4, 1950.